

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint of PrairieWave
Telecommunications, Inc. Against AT&T
Communications of the Midwest, Inc.

ISSUE DATE: February 20, 2007

DOCKET NO. P-442/C-05-1842

ORDER ACCEPTING SETTLEMENT
AGREEMENT

PROCEDURAL HISTORY

On November 21, 2005, PrairieWave Telecommunications, Inc. (PrairieWave), a competitive local exchange carrier serving customers in ten Minnesota exchanges, filed a complaint under Minn. Stat. § 237.462 against AT&T Communications of the Midwest, Inc. (AT&T), an interexchange carrier. The complaint claimed that AT&T was refusing to pay PrairieWave's tariffed rates for intrastate access services, thereby failing to meet its obligations as a telecommunications carrier under Minnesota law and inhibiting local retail competition. The complaint asked the Commission to order AT&T to pay PrairieWave's tariffed access rates.

On December 15, 2005, AT&T filed an answer and counterclaim. The answer admitted that AT&T had not paid monthly invoices submitted by PrairieWave and that it had denied PrairieWave's requests for payment. The counterclaim alleged that PrairieWave's tariffed access rates were unjust, unreasonable, discriminatory, anti-competitive, and therefore illegal and unenforceable. The counterclaim asked the Commission to dismiss the complaint, open an investigation into PrairieWave's access rates, find those rates to be unjust, unreasonable, and harmful to the public interest, and set new rates at just and reasonable levels.

On February 8, 2006, the Commission issued an Order which, among other things, found that AT&T was legally obligated to pay PrairieWave's tariffed rates for tariffed services, required AT&T to file an accounting of unpaid amounts for tariffed services received, and referred for contested case proceedings AT&T's counterclaim that PrairieWave's tariffed rates were unjust, unreasonable, or otherwise unlawful.

The Minnesota Department of Commerce (the Department) intervened in the case, representing the broad public interest.

On December 4, 2006, PrairieWave and AT&T filed with the Administrative Law Judge hearing the case their Joint Motion to Withdraw Counterclaim and Approve Settlement Agreement of the Parties. In brief, that agreement provided for AT&T to pay PrairieWave the tariffed charges previously withheld and to pay PrairieWave's tariffed rates on a going-forward basis.

On December 18, 2006, the Administrative Law Judge submitted the settlement to the Commission under Minn. Stat. § 237.076. On the same date, the Department filed comments recommending that the settlement agreement not be approved unless

- (1) the companies amended it to certify that they were in full compliance with the Commission's February 8, 2006 Order and that they had no undisclosed side agreements pertaining to compensation for intrastate access services; or
- (2) the Commission conditioned its acceptance of the settlement agreement on the companies' continued compliance with the February 8, 2006 Order and their continued avoidance of any unfiled, side agreements pertaining to compensation for intrastate access services.

On January 10, 2006, AT&T filed an affidavit signed by Wauneta Browne, Regional Vice President – Legislative and Regulatory Affairs, stating, among other things, that

- AT&T acknowledged the continuing effectiveness of the February 8, 2006 Order.
- AT&T was in full compliance with the terms of the February 8, 2006 Order.
- AT&T had no undisclosed side agreements with PrairieWave regarding compensation for intrastate access services.
- AT&T would comply with Minnesota law in all future agreements regarding intrastate access services.

On January 11, 2007, the Department filed comments recommending that the Commission approve the settlement agreement based upon the representations in the affidavit. There were no other comments submitted.

On January 25, 2007, the case came before the Commission.

FINDINGS AND CONCLUSIONS

Under Minn. Stat. § 237.076, the Commission may accept a settlement upon finding that to do so is in the public interest and is supported by substantial evidence. The record demonstrates that the parties have resolved all issues between them, have complied and will continue to comply with the requirements of the February 2006 Order, and have refrained and will continue to refrain from entering into unfiled agreements regarding intrastate access services.

The Commission concurs with the Department that the parties' agreement is in the public interest and supported by substantial evidence. It will be approved.

ORDER

1. The Commission hereby accepts and approves the settlement agreement submitted by PrairieWave and AT&T.
2. The counterclaim filed by AT&T is hereby withdrawn.
3. This docket is hereby closed.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice) or 1-800-627-3529 (MN relay service).